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December 3, 2010

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

I write to bring to your attention the fact that certain FCC staff is circulating a document entitled "Strong and Wide Support for Chairman Genachowski's Open Internet Framework," which offers a compilation of laudatory quotes about the newest proposal to regulate the Internet. I have attached the document and a chart with the actual quotations and the omissions, but here is a sample of some of the disparities I noticed between these laudatory comments contained in "Strong and Wide Support..." and the actual reviews of the Internet regulation proposal:

- **The FCC quotes Jim Cicconni** as stating that AT&T is "pleased that the FCC appears to be embracing a compromise solution that is sensitive to the dynamics of investment in a difficult economy and appears to avoid over-regulation."

Omitted was the following -- "Obviously, AT&T's strong preference would be for the FCC to refrain from any regulation in the Internet space. We feel the industry's track record, the utter absence of any specific ongoing problem, and the state of the economy all argue for regulatory restraint. We also believe, based on jurisdictional concerns, that the issue should rightly be deferred to the Congress, a view also expressed by a bipartisan majority of that body."

See <http://attpublicpolicy.com/government-policy/att-statement-on-proposed-fcc-rules-to-preserve-an-open-internet/>.

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- **Bruce Mehlman** of the Internet Innovation Alliance is quoted in the FCC document:
“Today’s proposal seems to be the most effective option for reducing regulatory uncertainty in the broadband marketplace, enabling more widespread investment and deployment that will ultimately benefit consumers and our economy.”

Overlooked was his lead-in -- “We continue to see new regulations largely as a solution in search of a problem.”

See <http://internetinnovation.org/>.

- **Steve Largent** of the CTIA is said to state that “we understand and are pleased that the proposed rules have moved away from broad Title II regulation and toward a more tailored approach that recognizes the unique nature of wireless services. ... We believe significant input from a bipartisan majority of Congress and others, and the willingness of the Chairman to seek a workable solution, have contributed toward making the proposed rules less onerous. ... [W]e appreciate the Chairman’s attempt to find a way forward on this issue that recognizes the need to create certainty in the market and facilitate investment.”

Left behind -- “While we maintain our belief that any action in this area is unnecessary in the dynamic and rapidly evolving wireless environment, ... The wireless ecosystem moves at a startling pace, and if new rules are adopted, they should be reviewed in two years. ... We believe the best environment in which to continue this record is one that avoids overregulation and removes uncertainty. ... While we will wait to review the specific language in the text,”

See <http://www.ctia.org/media/press/body.cfm/prid/2036>.

- **Kyle McSlarrow** of the NCTA says: “[W]e believe that it is a fair resolution of this set of issues and that it is proposed in a way that achieves our essential and shared objectives: preserving the openness of the Internet and the incentives to invest and innovate for the benefit of consumers. And I want to thank and applaud Chairman Genachowski, his Chief of Staff, Eddie Lazarus, and their staff for listening, for their hard work on incredibly complex business and technology issues, and for their leadership in seeking a fair resolution of a difficult and controversial set of policy goals.”

But not -- “[W]e reserve our rights to vigorously challenge any such rule. Accordingly, NCTA will await the final resolution of the order at the next FCC meeting before making a final determination of our views or on any actions we might take subsequent to that meeting.”

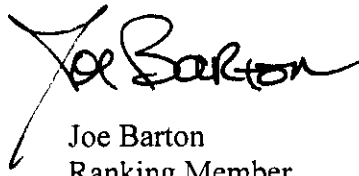
See <http://www.ncta.com/ReleaseType/Statement/McSlarrow-Statement-Regarding-Proposed-FCC-Rules-to-Preserve-an-Open-Internet.aspx>.

Letter to the Honorable Julius Genachowski
Page 3

I look forward to gaining a fuller understanding of what has happened and why. I hope you can take a moment to deal with the underlying issue, then update me on the outcome. Would that be possible to do by December 8, 2010?

If you have any questions, please contact our Committee Minority staff at (202) 225-3641.

Sincerely,



Joe Barton
Ranking Member

cc: The Honorable Henry A. Waxman, Chairman

Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker

Attachments

STRONG AND WIDE SUPPORT FOR CHAIRMAN GENACHOWSKI'S OPEN INTERNET FRAMEWORK

"President Obama is strongly committed to net neutrality in order to keep an open Internet that fosters investment, innovation, consumer choice, and free speech. The announced action by FCC Chairman Genachowski, building on the work of Chairman Waxman's collaborative effort to craft legislation in this area, advances this important policy priority."

-- Aneesh Chopra, CTO, White House, December 1, 2010

"The Communications Workers of America supports Chairman Genachowski's initiative to sustain open Internet principles and create the stable conditions necessary for critical investment and quality job creation in broadband networks."

-- Larry Cohen, President, CWA, December 1, 2010

We commend Chairman Genachowski for recognizing that the time to act is now. The Internet is and should remain a medium that is open to innovation, not one where big network operators get to pick winners and losers. This rulemaking is about preserving the characteristics that have made the Internet such an overwhelming success."

-- Leslie Harris, President, Center for Democracy & Technology (CDT),
December 1, 2010. CDT is a non-profit public interest organization
working to keep the Internet open, innovative, and free

"Maintaining an Open Internet is critical to our economy's growth and Chairman Genachowski and his team deserve kudos for their thoughtful leadership. This effort is a pragmatic balance of innovation, economic growth and crucial investment in the Internet. We look forward to working with FCC to protect these principles so the Internet grows and thrives for generations to come."

John Doerr, Partner at Kleiner Perkins Caufield & Byers. Kleiner Perkins
Caufield & Byers is a venture capital firm that has backed entrepreneurs in
over 500 ventures, including AOL, Amazon, Citrix, Compaq, Electronic
Arts, Genentech, Google, Intuit, Juniper Networks, Netscape, Sun,
Symantec, Verisign and Zynga.

"As the founder of Craigslist and a passionate believer in the economic and social benefits of an open and free Internet, I proudly endorse the Chairman's historic efforts to protect these important principles in our society. Common-sense rules of the road will

help ensure certainty in markets while also preserving the openness and freedom of the Internet that has helped generate millions of jobs and share billions of ideas around the world.

-- Craig Newmark, Founder, Craigslist, December 1, 2010.

"I am proud to join a diverse coalition in support of the Chairman's proposed rules of the road. This light-touch, common-sense framework will help protect investment and innovation throughout the ecosystem and will ensure certainty in markets for years to come."

-- Ron Conway, Founder, SV Angel, December 1, 2010. SV Angel is a Silicon Valley technology angel venture fund.

"We applaud the work of the Chairman Genachowski and FCC on this draft Open Internet framework. Chairman Genachowski has offered a quality framework that hits the right balance between encouraging investments, fostering innovation and protecting consumers in a manner that is both transparent and enforceable."

-- Rey Ramsey, President and CEO of TechNet. TechNet is the national, bipartisan network of more than four hundred CEOs. Its members represent more than one million employees in the fields of information technology, biotechnology, e-commerce and finance.

"Today ADE commends the FCC for embracing this spirit, rejecting partisan bickering and choosing mainstream compromise over extreme action in the debate over net neutrality. Today's announcement shows that thoughtful debate on policy can lead to solutions that uphold our commitment to preserving the open Internet while maintaining a focus on the priorities of the American people: restoration of our economy and a solution to creating jobs."

-- Shirley Franklin, Senior Advisor, Alliance for Digital Equality (ADE), December 1, 2010. The Alliance for Digital Equality (ADE) is a non-profit consumer advocacy organization that serves to facilitate and ensure equal access to technology in underserved communities.

"We believe that today's net neutrality proposal from the FCC represents an important step forward. It's vital for net neutrality regulations to promote new investments by network operators to increase broadband speeds, while also ensuring that consumers easily can access content and services from both start-up and established companies with the necessary quality of service and at the highest speeds available."

-- Statement by Fred Humphries, Microsoft, December 1, 2010.

"We applaud Chairman Genachowski for his leadership in moving forward with a balanced approach in the face of the heightened polemics on this issue...[t]he FCC's policy position represents a fair middle ground that will provide regulatory certainty to an issue that has been lacking it since the Comcast decision last spring."

-- Dean Garfield, CEO, Information Technology Industry Council (ITI), December 1, 2010. ITI is an advocacy group representing global leaders in innovation--from all areas of the ICT sector including hardware, services, and software.

"We ... urge you to bring the Open Internet rulemaking to conclusion ...the Commission can provide the certainty necessary for policymakers, consumers, investors, and innovators that the Internet will remain an open network, under the watchful eye of the Federal Communications Commission, and that the service will be delivered and managed with full and complete transparency. Combined, that will make it possible for the agency, advocates, engineers, and the media to police practices that could threaten innovation at the edge of the network. ... We understand that there are some who would have you go further and some that would have you do nothing. But we believe you are headed toward a principled center and we support that effort."

-- Senators John F. Kerry, Byron Dorgan and Ron Wyden, November 30, 2010.

"As an early-stage investor with deep ties to the technology community, I applaud Chairman Genachowski's proposed framework to protect a free and open Internet. Nothing is more important to America's economic future than the protection of a free and open Internet, and I am confident that Chairman Genachowski's proposed framework will achieve just that."

-- Ram Shiram, Founder, Sheralo Ventures, December 1, 2010. Sheralo is a venture capital firm that supports the development and commercialization of technology companies.

"If you believe in the need to protect the open Internet, this is the realistic way forward, and it could lay the groundwork for other steps if necessary in the future."

Kevin Werbach, Professor, Wharton School of The University Of Pennsylvania, December 1, 2010.

"We commend the Federal Communications Commission for tentatively putting open Internet rules on the agenda for the Dec. 21 Commission meeting and for, we expect, circulating a draft order. As Comcast's recent actions have shown, such rules are urgently needed."

-- Gigi B. Sohn, President and Co-founder Public Knowledge, December 1, 2010

"[W]e are pleased that the FCC appears to be embracing a compromise solution that is sensitive to the dynamics of investment in a difficult economy and appears to avoid over-regulation. ... Such an approach would reduce regulatory uncertainty, and should encourage investment and innovation in next generation broadband services and technologies. In that regard, we remain committed to working with the FCC to bring the benefits of broadband to all Americans."

Jim Cicconi, AT&T, December 1, 2010.

"As a technology venture capitalist representing hundreds of millions of dollars in investment, I strongly support your proposed rules to protect an open and free Internet....your proposal will help incubate growth for decades to come and should be adopted without further delay."

-- Jed Katz, Managing Director, Javelin Venture Partners, December 1, 2010. Javelin Venture Partners is an early stage venture capital firm specializing in technology based start-ups.

"DISH Network applauds Chairman Genachowski for moving forward on critically important net neutrality rules. His proposal is a solid framework for protecting the open Internet".

Charles Ergen, Chairman, President and CEO, Dish Network, December 1, 2010.

"Today's announcement by the FCC represents a prudent and balanced approach to managing the growing volume of traffic on the Internet. IBM will continue to work with others in the IT industry as this process moves forward to support fair and reasonable rules that will encourage continued investment in smarter systems in the United States."

-- Christopher Padilla, Vice President, Government Programs, IBM, December 1, 2010.

"FCC Chairman Julius Genachowski deserves a lot of credit for proceeding so thoughtfully and choosing a commonsense compromise in the face of hyper-partisan brinksmanship."

-- David Sutphen, Co-Chair, Internet Innovation Alliance (IIA), December 1, 2010. The Internet Innovation Alliance is coalition of business and non-profit organizations that aim to ensure every American has access to broadband Internet.

"Today's proposal seems to be the most effective option for reducing regulatory uncertainty in the broadband marketplace, enabling more widespread investment and deployment that will ultimately benefit consumers and our economy."

-- Bruce Mehlman, Co-Chair Internet Innovation Alliance (IIA), December 1, 2010. The Internet Innovation Alliance is coalition of business and non-profit organizations that aim to ensure every American has access to broadband Internet.

[W]e understand and are pleased that the proposed rules have moved away from broad Title II regulation and toward a more tailored approach that recognizes the unique nature of wireless services. ... We believe significant input from a bipartisan majority of Congress and others, and the willingness of the Chairman to seek a workable solution, have contributed toward making the proposed rules less onerous. ... [W]e appreciate the Chairman's attempt to find a way forward on this issue that recognizes the need to create certainty in the market and facilitate investment. "

-- Steve Largent, President and CEO, CTIA-The Wireless Association, December 1, 2010

"We applaud Chairman Genachowski for supporting a measured, forward-looking policy framework that recognizes the dynamic nature of the telecom ecosystem and the importance of continued investment, job creation and innovation in the vibrant communications sector. We appreciate Chairman Genachowski's leadership, commitment and support for continued growth and opportunity for consumers, technology innovators and workers, and investors in the communications sector and throughout the U.S. economy."

-- Jonathan Spalter, Chairman, Mobile Future Coalition, December 1, 2010. The Mobile Future Coalition is coalition of businesses, non-profit organizations and individuals advocating for an environment in which innovations in wireless technology and services are enabled and

"[W]e believe that it is a fair resolution of this set of issues and that it is proposed in a way that achieves our essential and shared objectives: preserving the openness of the Internet and the incentives to invest and innovate for the benefit of consumers. And I want to thank and applaud Chairman Genachowski, his Chief of Staff, Eddie Lazarus, and their staff for listening, for their hard work on incredibly complex business and technology issues, and for their leadership in seeking a fair resolution of a difficult and controversial set of policy goals."

-- NCTA President & CEO Kyle McSlarrow, President and CEO, NCTA, December 1, 2010. NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households. encouraged.

"We are happy to see that the Chairman appears to have...[struck] a balance between supporting growth in the tech sector and consumer protection. On behalf of our membership of hundreds of California innovators, we are happy to support the Chairman."

-- Erin Lehane, Executive Director, CALinnovates, December 1, 2010.
CALinnovates represents 150 technology companies and is focused on championing the conversation about the future of California's critical technology sector.

What the FCC quoted	What the FCC left out
<p data-bbox="219 240 822 640">“... we are pleased that the FCC appears to be embracing a compromise solution that is sensitive to the dynamics of investment in a difficult economy and appears to avoid over-regulation. ... Such an approach would reduce regulatory uncertainty, and should encourage investment and innovation in next generation broadband services and technologies. In that regard, we remain committed to working with the FCC to bring the benefits of broadband to all Americans.”</p> <p data-bbox="219 676 822 821">Jim Cicconi, AT&T, December 1, 2010. http://attpublicpolicy.com/government-policy/att-statement-on-proposed-fcc-rules-to-preserve-an-open-internet/</p>	<p data-bbox="860 240 1476 783">“The prospect of net neutrality regulation has lingered as a very real threat to industry investment and jobs for several years. Obviously, AT&T’s strong preference would be for the FCC to refrain from any regulation in the Internet space. We feel the industry’s track record, the utter absence of any specific ongoing problem, and the state of the economy all argue for regulatory restraint. We also believe, based on jurisdictional concerns, that the issue should rightly be deferred to the Congress, a view also expressed by a bipartisan majority of that body. Nonetheless, we recognize that the FCC has decided to move ahead.</p> <p data-bbox="860 825 1476 1485">“We understand that the FCC Chairman has prepared a compromise proposal aimed at bridging the differences that have long polarized this debate. Based on our understandings, this measure would avoid onerous Title II regulation; would be narrowly drawn along the lines of a compromise we have endorsed previously; would reject limits on our ability to properly manage our network and efficiently utilize our wireless spectrum; would recognize the capabilities and limitations of different broadband technologies; would ensure specialized services are protected against intrusive regulation; and would provide for a case-by-case resolution of complaints that also encourages non-governmental dispute settlement.</p> <p data-bbox="860 1527 1476 1747">“While any final statement of position by AT&T must await a careful reading of the actual order and rules when issued, ... We are also mindful of, and grateful for, the impact Congressional views have had in this process.”</p> <p data-bbox="860 1789 1476 1887">Jim Cicconi, AT&T, December 1, 2010. http://attpublicpolicy.com/government-policy/att-statement-on-proposed-fcc-rules-to-preserve-an-open-internet/</p>

	<u>preserve-an-open-internet/</u>
<p>"Today's proposal seems to be the most effective option for reducing regulatory uncertainty in the broadband marketplace, enabling more widespread investment and deployment that will ultimately benefit consumers and our economy."</p> <p><u>Bruce Mehlman, Co-Chair Internet Innovation Alliance (IIA), December 1, 2010.</u></p>	<p>"We continue to see new regulations largely as a solution in search of a problem. However, ..." <u>Bruce Mehlman, Co-Chair Internet Innovation Alliance (IIA), December 1, 2010.</u></p>
<p>"...we understand and are pleased that the proposed rules have moved away from broad Title II regulation and toward a more tailored approach that recognizes the unique nature of wireless services. ... We believe significant input from a bipartisan majority of Congress and others, and the willingness of the Chairman to seek a workable solution, have contributed toward making the proposed rules less onerous. ... [W]e appreciate the Chairman's attempt to find a way forward on this issue that recognizes the need to create certainty in the market and facilitate investment. "</p> <p>Steve Largent, President and CEO, CTIA-The Wireless Association, December 1, 2010</p>	<p>"Although we have not seen the specific language of the Chairman's proposal, in his remarks, Chairman Genachowski emphasized the appropriateness of recognizing differences between fixed and mobile broadband. While we maintain our belief that any action in this area is unnecessary in the dynamic and rapidly evolving wireless environment, The wireless ecosystem moves at a startling pace, and if new rules are adopted, they should be reviewed in two years.</p> <p>"The U.S. wireless industry is dedicated to serving its customers, is leading the world in investment and innovation, and is playing a prominent role in our country's economic recovery. We believe the best environment in which to continue this record is one that avoids overregulation and removes uncertainty. While we will wait to review the specific language in the text,"</p>
<p>"[W]e believe that it is a fair resolution of this set of issues and that it is proposed in a way that achieves our essential and shared objectives: preserving the openness of the Internet and the incentives to invest and innovate for the benefit of consumers. And I want to thank and applaud Chairman</p>	<p>"NCTA has consistently taken the view that broadband services should be regulated with a light touch under Title I of the Communications Act and not as common carrier services under Title II. Similarly, we have stressed that net neutrality regulation is unnecessary in light of the competitive</p>

Genachowski, his Chief of Staff, Eddie Lazarus, and their staff for listening, for their hard work on incredibly complex business and technology issues, and for their leadership in seeking a fair resolution of a difficult and controversial set of policy goals.”

-- NCTA President & CEO Kyle McSillarow,
President and CEO, NCTA, December 1, 2010.

marketplace, the absence of conduct that was harmful to consumers or competition, and the very real risk that regulation would undermine one of the great success stories in America -- rapid growth in the development of broadband networks that are changing the way we live and allowing consumers to enjoy an amazing array of applications, content and services.

“Nonetheless, with bipartisan encouragement, we made clear we would participate in negotiations, constructively and in good faith, with the goal of providing greater certainty through a framework that would preserve the openness of the Internet while protecting the ability of all actors in the ecosystem to invest and innovate to the benefit of consumers. Those negotiations over the last six months have not been easy, but they produced a rough consensus on a number of points, which we believe are reflected in the order circulated today.

“First, and perhaps most important, the order circulated today is grounded within the framework of Title I. We further understand that the rules proposed basically codify a code of conduct and commitments made by our industry five years ago; add a discrimination principle based on a “reasonableness” standard; and add a transparency rule that we believe can be helpful in aiding customer choice. We further understand that the rules do not preclude or inhibit our ability to innovate and deploy new and specialized services. Importantly, they appear to reflect Chairman Genachowski’s previously stated position that such rules will not and should not result in price regulation and to recognize the value of flexible business models such as usage based pricing.

“We recognize that this item will now be considered by the FCC as a whole. While

	<p>not perfect from our point of view and in the absence of further action by Congress, Should the order change in any material way from our understanding, we reserve our rights to vigorously challenge any such rule. Accordingly, NCTA will await the final resolution of the order at the next FCC meeting before making a final determination of our views or on any actions we might take subsequent to that meeting.</p> <p>“Finally, I do want to acknowledge and thank the members of Congress who, on a bipartisan basis, made clear that Title I was and is the appropriate regulatory framework.”</p> <p>-- <u>NCTA President & CEO Kyle McSlarrow,</u> <u>President and CEO, NCTA, December 1, 2010.</u></p>



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

December 10, 2010

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Barton:

Thank you for your letter regarding a document circulated by FCC staff regarding public statements on the draft open Internet framework.

In response to numerous press inquiries and other requests, I understand that a handout was provided to journalists and others that, where appropriate, included links to the full statements. I further understand that the public statements were widely distributed by the organizations themselves and could be easily obtained by interested parties.

I hope you find this information helpful.

Sincerely,

A handwritten signature in black ink, which appears to be "Julius Genachowski", is written over a large, stylized checkmark or "V" shape.

Julius Genachowski